

# **EOTT ENERGY Partners, L.P.**

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June 3, 1997

David S. Guzy  
Chief, Rules and Procedures Staff  
Minerals Management Service  
P.O. Box 25165  
MS 3101  
Denver, CO 80225-0165

By Overnight Courier and  
by Facsimile to (303) 231-3194

Re: Proposed Rules  
Department of Interior  
Minerals Management Service  
30 CFR Part 243  
Policy for Release of Third-Party Proprietary Information for the Administrative  
Appeals Process and for Alternative Dispute Resolution  
Issued April 4, 1997

Dear Mr. Guzy:

EOTT Energy Partners, L.P. ("EOTT") appreciates the opportunity to comment on the proposed rule for a policy for release of third-party proprietary information for the administrative appeals process and for alternative dispute resolution. EOTT, through its affiliated limited partnerships, EOTT Energy Operating Limited Partnership, EOTT Energy Pipeline Limited Partnership, and EOTT Energy Canada Limited Partnership, is engaged in the purchasing, gathering, transporting, trading, storage and resale of crude oil and refined petroleum products.

EOTT purchases crude oil produced from approximately 25,000 leases in 17 states. EOTT purchases crude oil from many of the largest integrated and independent producers in the United States. During 1996, EOTT purchased approximately 300,000 barrels per day of lease crude oil. Pipeline systems and EOTT's trucking operations provide the vital link between EOTT's crude oil purchasing and marketing activities. Within the United States, EOTT transports most of the lease crude oil it purchases by means of a fleet of over 300 owned or leased trucks, and by pipeline, including approximately 1,700 miles of intrastate and interstate pipeline and gathering systems owned by EOTT as well as common carrier pipelines systems owned by third parties.

Approximately 91% of EOTT's lease crude oil is purchased from independent oil producers, and approximately 9% is purchased from major integrated oil companies. As an intermediary, EOTT seeks to earn profits by buying crude oil at competitive prices, efficiently

transporting and handling the purchased crude oil and marketing the crude oil to refinery customers or other trade partners who can most benefit from the particular crude type.

As an independent crude oil gatherer and marketer, EOTT does not own or lease crude oil producing properties. As a third party purchaser of crude oil, EOTT holds no federal lease interests and has no operating interest in any crude oil producing field. Rather, EOTT views itself as a value-added intermediary that seeks to create its profit margins from the services it provides to its customers. Therefore, EOTT will often pay federal royalties as payor on behalf of lessees or operators from whom we purchase crude oil. Payment of federal royalties is merely an additional service EOTT provides as part of its purchase contract obligations. EOTT pays royalties based on the arm's-length negotiated price paid to the field production operator.

As a purchaser of federal crude oil and a payor of royalties to the MMS, EOTT opposes this proposed rule and, as requested in the proposed rulemaking, offers the comments on the following issues set forth in the proposed rule:

1. a. What type of information is proprietary? Any information which would reveal trade partners, prices, geographic areas of operation, crude types, or other specific trade economics would be considered proprietary.

- b. How long after such information is generated does it remain proprietary? This would vary on the type of information in question and the geographic location. Generally, as long as a company is doing business in an area which is similar to the business reflected in the data which could potentially be released, EOTT would consider the information to be proprietary. While a contract may have been initiated several years ago, it may still be in effect on an evergreen basis, with modifications made for additional leases included and different price arrangements.

- c. Describe the competitive harm that release of this information would cause. Having this type of information being made public could potentially hurt a company such as EOTT because the release of competitors' economics would detrimentally affect EOTT's ability to negotiate a transaction. Additionally, knowledge of a competitor's position in a particular geographic area would potentially expose areas of vulnerability for that particular company. The MMS argument that coal leases have a longer term, which would result in the data remaining proprietary for a longer period of time, is not completely accurate. While it is true that coal leases may have longer terms, it is not uncommon for oil and gas transactions, through evergreen renewals, to go on for as long as seven years also.

2. When there is an appeal of an MMS order or ADR, should MMS release relevant proprietary information if the requester signs confidentiality and liability agreements. EOTT's response to this question is no. While confidentiality and liability agreements may offer some protection, a company such as EOTT would have no control as to how or when this information

was being distributed by the MMS. Additionally, a company such as EOTT would not be a signatory of a confidentiality agreement and would not have any direct enforceability against a company which might violate the confidentiality provisions contained therein.

3. Should MMS notify the submitters that the proprietary information has been requested? In the event the MMS makes this proposal a rule, EOTT is of the opinion that it should be mandatory that a company be notified when their proprietary information has been requested by another company. Without this type of notification, a party such as EOTT would not be aware of when and where this information is being distributed by the MMS.

4. Are the proposed safeguards of this rulemaking adequate to protect the submitter's interest? Are there additional safeguards that MMS should include in this rule? EOTT is concerned that the safeguards in this proposed rulemaking will not adequately protect the interests of a company such as EOTT. Unless the company who supplied the information to the MMS is included as a party to the confidentiality agreement, it would have no way of enforcing any violations of the agreement. The major concern is the general lack of control of the information which is released by the MMS.

5. Should this rule include release of relevant proprietary information needed to file appeals with the MMS director or defend against civil penalties under 30 C.F.R. Parts 241 or 251? Because of the concerns expressed by EOTT previously, we are against the release of any proprietary data.

6. Should MMS restrict the proposed list of people allowed to review the relevant proprietary information further than the proposed rule requires? Again, our general concern is the lack of control over this information. Consequently, we do not feel that restricting the proposed list of people to review the information would have a substantial impact on our objection to this proposed rulemaking.

7. Should MMS charge fees for the relevant proprietary information based on the fee schedule use for FOIA requests at 43 C.F.R. Part 2? Charging fees for the relevant proprietary information does not diminish our concern about potential release of proprietary information and we oppose any release of this information.

In summary, EOTT is opposed to this proposed rulemaking. As stated above, there is no clear cut formula or rule of thumb for the MMS to use to determine whether or not the information contained in their records would be considered proprietary or not proprietary to the party who had provided the information to the MMS. Additionally, there is potential for lack of control of the information released to other parties, particularly if there is a delay in notifying the parties who provided the information to the MMS that there has been a request to have this information released.

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Thank you for the opportunity to comment on this proposed rulemaking. Should you have any questions, please do not hesitate to contact me at 303-629-5044.

Very truly yours,

*Kelly M. Clark /mms*

Kelly M. Clark,  
Vice President for EOTT Energy Corp.,  
as General Partner